IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6023 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order 3

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5. Whether it is to be circulated to the Civil Judge? : NO

BABUBHAI A SHETH

Versus

REGIONAL TRANSPORT AUTHORITY RTO

Appearance:

MS MITA S PANCHAL for Petitioner

Mr.K.T.Dave, Ld.Asst.GOVERNMENT PLEADER for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE M.S.SHAH

Date of decision: 25/07/2000

ORAL JUDGEMENT

Learned advocate for petitioner seeks leave to produce on record the copy of representation, dated 15.3.2000. Leave is granted.

1. Rule. Mr.K.T.Dave, Ld.Asst.Govt.Pleader waives service of rule on behalf of respondents. In the facts and circumstances of the case, the petition is taken up for final hearng today.

2. In this petition under Article 226 of the Constitution the petitioner has challenged the order, dated 15.4.2000 passed by the Commissioner of Transport rejecting the petitioner's application for certifying that the petitioner had not used the two buses bearing Reg.Nos (i) GJ-4-U-9999 and (ii) GJ-4-U-9997 for the period from 1.8.1998 to 31.3.1999. So far as the period from 1.8.98 to 31.10.98 is concerned there is no dispute about the fact that the Regional Transport Officer has certified that the buses were not in use. However, the matter was required to be considered by the Commissioner of Transport for non-user for the period beyond three months. By the impugned order dated 15.4.2000 the Commissioner of Transport has negatived the petitioner's request and has held that the petitioner had not shown reasons beyond the petitioner's control for non-user of buses beyond the period of three months. It is the aforesaid order which is under challenge in this petition.

3. The learned advocate for the petitioner has invited the attention of this Court to the judgment, dated May 9, 2000 of the Apex Court in Civil Appeal No.198/99 (State of Gujarat vs Kaushibhai K.Patel & Anr) wherein it has been held that the owner of the Omni bus is not to be required to prove that the non-user of the vehicle was for reasons beyond the control of the owner. It has been held that what is required to be proved is that the vehicle was not used.

4. In view of the aforesaid judgment, it is clear that the order dated 15.4.2000 passed by the Commissioner of Transport (in wich the Commissioner has considered the question whether the petitioner had proved non-user beyond the petitioner's control) is required to be set aside with liberty to the Commissioner of Transport to re-examine the matter in light of the law laid down by the Apex Court in the aforesaid decision.

5. The petition is accordingly partly allowed. The impugned order, dated 15.4.2000 (at annexure "A" to the petition) is set aside with liberty to the Commissioner of Transport to reexamine the matter in light of the law

laid down by the Apex Court in the matter aforesaid within a period of one month from the date of receipt of writ of this Court or the certified copy of this judgment, whichever is earlier.

It is further directed that since the petitioner's application, dated 19.8.1999 for transfer of the vehicle is awaiting consideration in view of the aforesaid dispute, the matter shall be decided expeditiously and in any case within a period of one month as aforesaid and thereafter within a period of fortnight the application for transfer shall also be considered in accordance with law. In case the petitioner is required to furnish any solvent security to the satisfaction of the authority, the petitioner shall furnish such security.

6. Rule is made absolute to the aforesaid extent. No order as to costs. Direct service is permitted.

25.7.2000 (M.S.SHAH,J)